SUPREME COURT, U. S.

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Nos. 1 and 2

Supreme Court of the United States

OCTOBER TERM, 1963

MANUEL ARISTEGUIETA, Consul General of the Republic of Venezuela, on behalf of the Republic of Venezuela, *Petitioner*,

v.

THE FIRST NATIONAL CITY BANK OF NEW YORK; FRENCH AMERICAN BANKING CORPORATION; THE ROYAL BANK OF CANADA; FORTUNATO HERRERA; POLINVERSIONES, C.A., a Venezuelan corporation; SILVIO GUTIERREZ; NAPOLEON DUPOUY; PEDRO A. GUTIERREZ ALFARO and LOLA T. DE GUTIERREZ ALFARO, *Respondents*.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE SECOND AND FIFTH CIRCUITS

MOTION FOR DISPOSITION OF CASES AS MOOT

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These consolidated cases appear to be moot, and by this motion petitioner respectfully requests that this Court make appropriate disposition of them in light of their mootness. The suggested disposition is, in accordance with this Court's customary practice, to

vacate the judgments below and remand each case to the Court of Appeals from which it came with instructions to each court to order the particular proceeding under review dismissed as moot. *United States* v. *Munsingwear, Inc.*, 340 U.S. 36, 39-40 (1950). The facts petitioner believes make the cases moot are as follows:

The cases arose from an international extradition proceeding under 18 U.S.C. § 3184. They involved attempts by the demanding government in that proceeding, represented by the petitioner as plaintiff, to compel the production of certain bank records as evidence in its behalf. In No. 1 the Court of Appeals for the Fifth Circuit ordered quashed the subpoenas issued in the Southern District of Florida directed to certain banks in New York City, which required the production of specified records of those banks in court in Miami. In No. 2 the Court of Appeals for the Second Circuit ordered quashed subpoenas issued out of the District Court for the Southern District of New York upon notices of deposition, directed to the same banks and requiring production of substantially the same records as upon deposition.

This Court granted certiorari to review the judgments of both courts of appeals on March 20, 1961. 365 U.S. 840. Meanwhile, petitioner, foreseeing lengthy litigation over the bank records and not wishing to delay the extradition proceeding on that account, proceeded with the demanding government's case in extradition without the benefit of the records. On June 23, 1961, the extradition magistrate found probable cause to believe the defendant in the extradition proceeding, Marcos Perez Jimenez, guilty of the crimes with which he was charged to which the bank records

would have been relevant. The magistrate made the appropriate certifications to the Secretary of State and committed the defendant, all pursuant to 18 U.S.C. § 3184. The defendant sought to challenge the magistrate's determination by petition for habeas corpus. This petition was dismissed by the District Court for the Southern District of Florida on August 23, 1961.

The records in these cases having been printed and the time for briefing drawing near, petitioner asked this Court to continue the cases on its calendar but to defer consideration of them in view of the distinct possibility that they would become moot when the habeas corpus case was concluded in the appellate courts. In response this Court on October 9, 1961, ordered argument of the cases postponed. 368 U.S. 804.

In due course an appeal from the dismissal of the habeas corpus petition was heard by the Court of Appeals for the Fifth Circuit and on that appeal the judgment of dismissal was affirmed on December 12, 1962. This Court denied a petition for certiorari on May 13, 1963, 373 U.S. 914, and on June 17 denied a petition for rehearing, 374 U.S. 858.

Thereafter, the judicial proceedings having run their course, the Secretary of State on August 12, 1963, issued his warrant of surrender, directing that the defendant Perez Jimenez be delivered up to the authorities of the demanding government to be taken to Venezuela for trial. On August 16 this warrant was executed by the delivery of the defendant, and he was conveyed out of the United States to Venezuela, where a criminal proceeding against him is now going forward.

In these circumstances it seems clear that the cases are moot, since there is no possibility of the extradition proceedings being reopened for the receipt of additional evidence.

Petitioner has hitherto paid all relevant costs, including the cost of printing the record in the two cases, and is informed by the Clerk's Office that there are no further costs. This Court's order vacating the judgments below because of mootness should not, of course, include any assessment of costs.

WHEREFORE, petitioner prays that this Court enter an order (1) in No. 1 vacating the judgment of the Court of Appeals for the Fifth Circuit and remanding the case to that court with instructions to order the proceeding in the District Court with respect to subpoenas in connection with the extradition proceeding dismissed as moot and (2) in No. 2 vacating the judgment of the Court of Appeals for the Second Circuit and remanding the case to that court with instructions to order the proceeding dismissed as moot.

Respectfully submitted,

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September 1963